



California Fair Political Practices Commission

December 17, 1985

Joseph E. Petrillo
785 Market Street, 14th Floor
San Francisco, CA 94103

Re: Your Request for Advice
Our File No. A-85-255

Dear Mr. Petrillo:

You have requested advice from this office on your duties under Government Code Sections 87400-87405 of the Political Reform Act.^{1/}

QUESTION

You asked whether you may perform consulting services to the City of Carlsbad on the Bataquitos Lagoon Enhancement Plan in view of the fact that you previously served as the Executive Officer of the State Coastal Conservancy.

CONCLUSION

Yes, you may perform such consulting services based on the discussion below.

DISCUSSION

You stated the facts as follows:

Approximately one year ago, while serving as Executive Officer, of the State Coastal Conservancy, I authorized the staff to assist in resolving conflicts surrounding the restoration and enhancement of Bataquitos Lagoon in San Diego County. This was a voluntary action and not required by any provision of

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

law. As part of that initiative I authorized the hiring of consultants. During my tenure several meetings were held with a number of the participants (Public Agencies and private parties). During this time, an environmental mitigation program was announced for Bataquitos Lagoon providing funds to restore the lagoon as mitigation for proposed fill in the Port of Los Angeles. The conservancy staff (not the Conservancy) decided not to take an official position on this proposal. At no time during my tenure did I receive the results of the studies. The agencies to which any plans must be submitted for approval were the Coastal Commission and the Federal Fish and Wildlife Service. Neither agency was significantly involved at that time.

Subsequent to my departure (approximately two months) from the Conservancy, I entered a contract with the City of Carlsbad to:

1. Consult with and participate in activities of appropriate agencies to assure the City is designated the agency to carry out the restoration plan to be funded by the mitigation funds. (The choice is the prerogative of the Fish and Wildlife Service.
2. Assist in resolving disputes among the agencies as to the content of the Environmental Plan.
3. Review and assist in drafting any documents required.

It was the intention of the contract that I participate in activities of the Fish and Game to set up a program for receipt of the Port mitigation funds and to assist in developing the criteria and documentation for the development of a plan for the lagoon to ultimately be submitted to the Coastal Commission.

Subsequent to my departure from the Conservancy, the studies and plans were completed and publicized. They have not been formally adopted by the Conservancy or anyone else, but merely represent the consultants conclusions. They now form the starting point from which the ultimate plan will emerge. In carrying out my functions it is advisable but not necessary that I talk with the Conservancy staff although the nature of

the intergovernmental meetings makes it almost impossible not to.

The provisions of the Act which apply to former state employees who work in the private sector are Sections 87400 through 87405. The basic prohibition is found in Section 87401 which provides as follows:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest; and

(b) The proceeding is one in which the former state administrative official participated.

The issue in your situation is whether there was a "proceeding" before the Conservancy within the meaning of the law in which you participated. Section 87400(c) defines "judicial, quasi-judicial or other proceeding" to mean "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency...." You authorized studies on the lagoon restoration, and meetings were held with a number of the interested parties. However, the studies were not completed and a lagoon plan was not submitted to the Coastal Conservancy while you were the Executive Officer nor was any other proceeding concerning the lagoon restoration brought before the Conservancy by either Conservancy staff or private parties. In addition the Conservancy never took an official position. Thus, we conclude that there was not a "proceeding" before the Coastal Conservancy within the meaning of Section 87401 which involved the subject matter of your consulting contract with the City of Carlsbad. Therefore, the prohibitions contained in Sections 87401 and 87402 do not apply to your consulting activities.

Joseph E. Petrillo
December 17, 1985
Page 4

Please feel free to contact me if I may be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Maura Fishburn", with a long horizontal flourish extending to the right.

Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh

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DEC 4 9 38 AM '85

JOSEPH E. PETRILLO
785 Market Street, 14th Floor
San Francisco, California 94103
(415) 553-3843

December 3, 1985

Ms. Diane Fishburn
Fair Political Practices Commission
428 J. Street, Suite 800
Sacramento, California 95814

Dear Ms. Fishburn:

Enclosed is a statement of facts. I would appreciate it if you would review it and render an opinion as to whether acceptance of payment for my activities under the contract mentioned therein would constitute a violation of § 87400 et seq. of the Government Code.

According to previous oral advice from attorneys for the Coastal Conservancy and the FPFC, no violation exists, however, recent public interest in the contract prompts this letter.

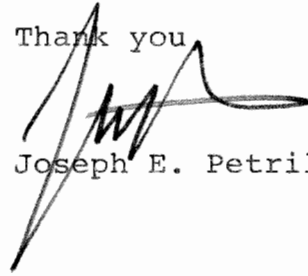
In my opinion, although in general the subject matter is similar, the proceedings are different, the Conservancy's role was voluntary and directed at resolving conflicts concerning the ultimate status of the LACORN. The proceeding of interest to my client, the City of Carlsbad, is the disposition of the mitigation funds and ultimately the approval of the plan by the Coastal Commission. While this latter agency would have to approve the Conservancy's program also, no action to submit such a plan to them had been taken by the Conservancy during my tenure. Also having not reviewed the plans or studies prior to my departure makes me question whether I "participated" in a proceeding.

I would also like to know, if there is a violation, how I may correct it? For example, if I avoid contact with the Conservancy staff will I then comply?

Ms. Fishburn
December 3, 1985
Page 2

I would appreciate an answer as soon as possible because, although I am currently working under the contract, I have agreed not to bill for my services if the ruling is adverse.

Thank you



Joseph E. Petrillo

JEP/lb
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STATEMENT OF FACTS ON THE
BATAQUITOS LAGOON ENHANCEMENT PLAN

Approximately one year ago, while serving as Executive Officer, of the State Coastal Conservancy, I authorized the staff to assist in resolving conflicts surrounding the restoration and enhancement of Bataquitos Lagoon in San Diego County. This was a voluntary action and not required by any provision of law. As part of that initiative I authorized the hiring of consultants. During my tenure several meetings were held with a number of the participants (Public Agencies and private parties). During this time, an environmental mitigation program was announced for Bataquitos Lagoon providing funds to restore the lagoon as mitigation for proposed fill in the Port of Los Angeles. The conservancy staff (not the Conservancy) decided not to take an official position on this proposal. At no time during my tenure did I receive the results of the studies. The agencies to which any plans must be submitted for approval were the Coastal Commission and the Federal Fish and Wildlife Service. Neither agency was significantly involved at that time.

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2. Assist in resolving disputes among the agencies as to the content of the Environmental Plan.
3. Review and assist in drafting any documents required.

It was the intention of the contract that I participate in activities of the Fish and Wildlife Service and the Department of Fish and Game to set up a program for receipt of the Port mitigation funds and to assist in developing the criteria and documentation for the development of a plan for the lagoon to ultimately be submitted to the Coastal Commission.

Subsequent to my departure from the Conservancy, the studies and plans were completed and publicized. They have not been formally adopted by the Conservancy or anyone else, but merely represent the consultants conclusions. They now form the starting point from which the ultimate plan will emerge. In

carrying out my functions it is advisable but not necessary that I talk with the Conservancy staff although the nature of the intergovernmental meetings makes it almost impossible not to.

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